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IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-1562

LEON BURAS, JR., et al.,
Petitioners,

versus

UNITED STATES OF AMERICA,
CHEVRON OIL COMPANY, ET AL.,
Respondents.

REPLY TO CHEVRON'S BRIEF

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This reply is submitted in response to the brief of the Chevron defendants, the Government having decided, apparently, not to submit a brief in opposition to the Petition for Certiorari.*

I.

Chevron's brief in opposition does not deal adequately or fairly with the important public policy reasons advanced

*After the filing of the Petition for Certiorari, the Chevron defendants requested and obtained an extension of time to July 12, 1973 within which to "coordinate" their brief with that of the Government. (Letter from counsel for Chevron to the Clerk of the United States Supreme Court, dated June 1, 1973). The Chevron defendants, in fact, filed their brief on or about July 12. A few days earlier, however, the Government requested and obtained a two-week extension within which to file its brief. Petitioners' counsel consented to the extension on the express condition that no additional extensions would be sought. No further extension has, in fact, been sought, but the Government did not file a brief in opposition by July 26, or to the present writing. Since we are reluctant to believe that the Government would deliberately violate the spirit of its undertaking to counsel, we can only conclude that the Government has decided to rely on Chevron and not to file a brief of its own.

for granting the writ. Although conceding that the resolution of this case is controlled by Louisiana state law, it offers no valid reason why resolution of those questions should not be determined by the Supreme Court of Louisiana, the only tribunal competent to make an authoritative determination.

II.

Chevron's assertion that the "vital interests" of the State of Louisiana do not require the granting of a writ must be viewed in the light of the representations made by the State of Louisiana in its Motion to file an *amicus* brief in this Court:

> "The State of Louisiana has a substantial interest in the proceeding pending before this Honorable Court. Having reviewed the decision of The Fifth Circuit, 458 F. 2d 346, the State of Louisiana is compelled to suggest that the Court below has committed grievous error in interpreting the law of the State of Louisiana with respect to the validity of State patents, State administrative practices, the procedural capacity of third parties to attack the validity of patents, and the weight accorded to the provisions of La.R.S. 13:3726.
>
> "The State of Louisiana suggests that the decision of the Fifth Circuit, if not reviewed and reversed, will have an inestimable adverse effect upon the certainty of land titles in the State."

III.

Even Chevron recognizes that compelling interests of the State of Louisiana are at stake in this litigation. Indeed, Chevron goes so far as to argue that the decision of the Fifth Circuit advances those interests; that the decision "is

unquestionably a protection to the State of Louisiana"; and that it "promotes stability in titles derived from State patents." (*Br. Op.* p. 19) It seems obvious, however, that the office of the Attorney General of the State of Louisiana is more likely to be concerned with protection of Louisiana's vital interests than is the Chevron Oil Company. And it is equally obvious that the Supreme Court of Louisiana is the authoritative judicial tribunal for articulating Louisiana's public policy, as reflected in its statutes and jurisprudence, not the Fifth Circuit. Just as the Fifth Circuit has erroneously second-guessed the substantive law of Louisiana, so has it also erroneously second-guessed what was and is the public policy of Louisiana.

IV.

Chevron has attempted to minimize the chaos being created in Louisiana title law by asserting (*Br. Op.* p. 19) that the law in effect when the subject patents were issued has been amended substantially in the last seventy years and that the 1912 six-year statute of limitations protects patents in any event. That argument ignores the facts that (1) substantially all land titles in Louisiana stem from patents issued under the authority of laws passed prior to the turn of the century and (2) on the theory promoted by the Fifth Circuit, if there is not complete compliance with all procedural prerequisites, a "patent" is not a patent at all* and hence would not be entitled to the protection of the six-year statute.

V.

Chevron claims that, irrespective of the public interests involved, petitioners' delay in requesting utilization of

*Parenthetically, since Chevron's 1903 patents were also signed by the Governor without presentation of a Treasurer's receipt, those patents would also be defective under the Fifth Circuit's interpretations of the 1880 statute.

Louisiana's certification procedure now precludes its use. This argument borders on the frivolous. The original decision of the three-judge panel of the Court of Appeals was rendered on March 23, 1972. A Petition for Rehearing En Banc was filed on May 17, 1972, at which time the State of Louisiana also filed its *amicus* brief. The certification statute here at issue was enacted approximately one month later—June 22, 1972—and was called to the attention of the Court of Appeals on July 13, 1972, as soon as counsel for the Burases learned of its enactment. There is thus no factual basis for Chevron's claim of delay. Moreover, its footnote 22 (*Br. Op.* p. 18), which reads: "Significantly, the Attorney General's brief [in the Fifth Circuit] does *not* urge abstention by the Federal courts and certification of state questions to the state court" is clearly misleading, since there was no certification statute at the time the Attorney General filed his brief in the Court below.*

VI.

Chevron argues that "(w)hatever the quarrel Petitioners may promote with the *wording* of the Fifth Circuit's *opinion,* its *decision* is correct under Louisiana and general law." (*Br. Op.* p. 13) (Emphasis added). Chevron thus appears to concede, albeit *sub silentio,* the weakness of reasoning which underlies the Fifth Circuit's opinion.

To buttress its claim that the Fifth Circuit arrived at a correct result, Chevron relies heavily on the argument that the Governor's signatures on the 1898 patents are forgeries. Thus, its brief is replete with characterizations of the 1898 patents as "fictitious" (*Br. Op.* pp. 3, 10), "spurious" (*Id.* at 3, 6), "counterfeit" (*Id.* at 5) and

*In its brief in this Court, the State of Louisiana urges that the Fifth Circuit should, at the very least, have remitted the parties to the Supreme Court of Louisiana for determination of the controlling State law questions.

"simulated" (*Id.* at 13); and substantially all references to those patents are enclosed in quotation marks.

Yet neither of the courts below found that the 1898 patents were forgeries. To the contrary the trial court specifically found (Pet. App. p. 47a) that "there is *no evidence* of any wrongdoing on the Governor's part or any forgery of his signature." (Emphasis added). And the Court of Appeals, though noting that there "is some question as to whether the signature on those patents is that of the Governor," proceeded to decide the case on the assumption that the signatures were, in fact, genuine (*Id.* at 73a-74a).*

Evidence of the genuineness of the 1898 patents is overwhelming:

Certificates of Entry on the subject lands were recorded in 1895. Formal patents based upon those entries were issued in November 1898 and recorded in 1899. The official conveyance records of Plaquemines Parish support these documents as being the "senior" or earlier patents. As the District Court noted (Pet. App. p. 45a), it is incredible to believe that the Recorder of Plaquemines Parish would record a patent that was not, in fact, signed by the Governor. Furthermore, the original patents were examined in 1903 by the successor Register Smith, who knew that his predecessor in office was a thief. Smith was obviously looking for any kind of irregularity. If the 1898 patents had been forgeries, Smith would certainly have rejected them as such. In fact, he did no such thing. To the contrary, he acknowledged the genuineness of the patents in official correspondence and made an appropriate entry concerning them in his official Order Book. Genuineness was

*If the genuineness of the Governor's signatures had been a genuine issue of material fact, the failure of the jury to resolve that issue would have resulted in a new trial, not dismissal of the case. Indeed, the Chevron defendants in their principal brief below (pp. 54-55) urged that they were entitled to a new trial on the issue of genuineness, if that issue were material.

also established by a series of "ancient document" statutes, upon which the District Court relied (See Pet. App. pp. 4a, 43a).*

We note, finally, that Chevron's argument that the 1898 patents must have been forged because the Governor would never have violated Louisiana law by executing such patents in the absence of a Treasurer's receipt is belied by the conceded fact that the Governor signed the 1903 patents upon which Chevron's claims are founded *the day before the Treasurer's receipts were issued.*

That Chevron finds it necessary to argue the case on non-existent facts demonstrates the serious reservations with which Chevron must view the correctness of the Fifth Circuit's opinion. And rightfully so. Its efforts to create a phantom issue of fact with respect to the Governor's signature are consistent with its prior efforts to obscure the real issues of this case.

VII.

Chevron's suggestion that its position is somehow or other advanced by the failure of Buras or his heirs to bring suit on the 1898 patents until after oil was discovered in 1950 is legally unsound. That the poor and uneducated Burases were not fully familiar with their legal rights and therefore took no *judicial* steps to protect them does not operate to deprive them of such rights, absent the Government's acquiring ownership by adverse possession. It has been held that the Government did not acquire the land in dispute by adverse possession. Furthermore, the record establishes that long before oil was discovered, the

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*Chevron's claim that reversal of the Fifth Circuit would open the State of Louisiana to a flood of forgeries (See the hypothetical at *Br. Op.* pp. 10-11) is absurd. Obviously, a forged nineteenth-century patent, presented for recordation in 1973, by that fact alone, would make one suspicious of the genuineness of the document. But here, the 1898 patents as well as the Certificates of Entry and the 1899 deed were recorded in the conveyance office with promptness.

Buras heirs were vigorously pursuing their claims through Federal administrative channels. The jury found as a fact that appropriate protests and application for redress to officials of the Government with responsible authority in the matter were made by the Burases years before the execution of the Chevron lease and the subsequent discovery of oil. The claim that the Burases did not act quickly enough comes with particular ill grace from Chevron, which, for so many years, engaged in a campaign to keep its own activities and information secret.

VIII.

The Louisiana authorities on the need for registration of patents in the State land office so heavily relied on by Chevron (*Br. Op.* pp. 8-9) were overruled by *Egle* v. *Constantin,* 198 La. 899 (1941). The District Court had no difficulty in recognizing the errors of Chevron's argument and dismissed Chevron's argument after full consideration (Pet. App. pp. 31a-33a). And the Federal cases relied on by Chevron relate to the Federal land system, a system totally at variance with the system adopted by Louisiana.

IX.

Chevron seeks to create the impression that Judge John Minor Wisdom participated in this case and affirmed his prior general dicta in *Butler* v. *Bazemore.* (See Pet. p. 39; *Br. Op.* pp. 15-16). In point of fact, Judge Wisdom did not participate below. (Pet. App. p. 78a).

X.

It would be inappropriate to close this reply without passing reference to yet another extraordinary tactic employed by Chevron. Chevron here relies on a newspaper article for a contemporary (1900) view of the applicable

law. The importance attached to this article is demonstrated by the fact that Chevron's appendix to its brief in opposition consists solely of what Chevron represents to this Court to be "the pertinent parts" of the article in question. (*Br. Op.* p. 15 fn. 17). Omitted from the "pertinent parts", however, is the following passage which demonstrates conclusively not only that the portions quoted by Chevron have no application to those who, like Barrois in 1898, had received formal patents, but also that all such persons were protected:

> "This thing has been going on for several years, and it now seems strange that the applicants did not press their applications to patent or insist on the return of their money. A great many did and are therefore fortunate; but the more confiding and indulgent did not and have lost."

The willingness of Chevron to rely on—and then to distort—a newspaper article to support its view of the law demonstrates the desperate lengths to which it is prepared to go to deprive petitioners of their patrimony. This Court should not countenance such tactics.

CONCLUSION

For almost thirty years the Burases have actively been seeking vindication of their rights. For many years, these poor and uneducated people were lulled into inactivity by conduct which can only be described as reprehensible. When they sought to assert their rights in the Louisiana state courts in 1954 they were thwarted by the filing of this action, which was then held in abeyance for a decade because of the pendency to other litigation to which the Burases were not party. In 1969, the Burases finally saw their rights vindicated by a jurist steeped in Louisiana law and practice, only to have the fruits of their victory taken from them by an appellate decision, rendered by judges

unfamiliar with Louisiana practice, which is not only erroneous, but also threatens to throw Louisiana land law into chaos. The Burases' last chance to vindicate their rights rests with this Court.

For all the reasons advanced, petitioners respectfully pray that the Petition for Certiorari should be granted.

Respectfully submitted,

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